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RECEIVED
SEP 04 2020
Department of Water Resources
Eastern Region

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR
PERMIT 29-14315 IN THE NAME OF
344 NORTH 15 LLC

**UNOPPOSED MOTION FOR
APPROVAL OF STIPULATION TO
RESOLVE CITY OF POCA TELLO
PROTEST AND WITHDRAWAL OF
PROTEST CORRECTED**

Protestant, City of Pocatello ("City"), by and through its attorney, hereby requests the Department of Water Resources ("Department") issue an Order approving the stipulation between the Applicant 344 North 15 LLC, and Protestant City and the withdrawal of City's protest. As grounds therefore, Protestant states as follows:

1. Applicant consents to this motion.
2. Applicant and Protestant have entered into a Stipulation dated August 27, 2020, which resolves the disputed issues between the parties. The Stipulation is attached hereto and incorporated herein as **Exhibit A**.
4. Approval of the Stipulation between Applicant and Protestant will facilitate an efficient resolution of this matter.

5. The Parties agree that the Stipulation shall be filed with the Department, and the City's protests withdrawn upon entry of an appropriate order by the Department providing that the above conditions be placed on any permit granted.

6. The Parties acknowledge that any permit issued may include other provisions or conditions not identified in the Stipulation, provided such conditions are not less protective of Pocatello's interests than those provided for in this Stipulation. Each party reserves, and neither waives nor relinquishes, its respective rights, remedies or interests as to any conditions not identified in this Stipulation.

WHEREFORE, Protestant requests that the Department enter an order:

A. indicating that the conditions identified in the Stipulation shall be included in any permit, and that any permit shall reference and incorporate the attached Stipulation;

B. approving this Motion for Approval of Stipulation to Resolve City of Pocatello's Protest and Withdrawal of Protest.

Respectfully submitted this 1st day of September, 2020.

CITY OF POCATELLO



Sarah Klahn

Attorney for City of Pocatello

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of September, 2020, I caused to be served a true and correct copy of the foregoing **CORRECTED UNOPPOSED MOTION FOR APPROVAL OF STIPULATION TO RESOLVE CITY OF POCATELLO PROTEST AND WITHDRAWAL OF PROTEST** by the method indicated below, addressed to the following:

Idaho Department of Water Resources Eastern Region 900 N Skyline Dr Ste A Idaho Falls, ID 83402-1718 James.Cefalo@idwr.idaho.gov Christina.henman@idwr.idaho.gov Phone: 208-497-3784	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input checked="" type="checkbox"/> Email
Greg Sullivan Brockway Engineering PLLC 2016 N Washington St Ste 4 Twin Falls, ID 83301 Greg.sullivan@brockwayeng.com	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input checked="" type="checkbox"/> Email
344 North 15 LLC 344 N 15 th Avenue Pocatello, ID 83201-4023	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Email



Sarah Klahn

EXHIBIT A to
Unopposed Motion for Approval of
Stipulation to Resolve City of Pocatello
Protest and Withdrawal of Protest

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344 North 15 LLC
344 N 15th Ave
Pocatello, ID 83201-4023
Applicant

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR
PERMIT 29-14315 IN THE NAME OF
344 NORTH 15 LLC

STIPULATION TO RESOLVE
CITY OF POCATELLO'S
PROTEST

WHEREAS, Applicant 344 North 15 LLC ("Applicant") seeks an irrigation right in the captioned matter for use at use at 344 North 15th Avenue, Pocatello, Idaho;

WHEREAS, Applicant previously received approval under Transfer No. 83129 to use Water Right No. 29-14300 on the same place of use, 344 North 15 Avenue, Pocatello, Idaho (hereinafter "Place of Use");

WHEREAS, the permit application in the captioned matter identifies Water Right No. 29-14300 as the source of mitigation water for the new permit sought in the captioned matter;

WHEREAS, the Applicant's defined Place of Use of its applied-for irrigation water right is within the Protestant City of Pocatello's ("City") municipal water service area;

WHEREAS, the Applicant is currently served by and connected to the City's treated water lines for both domestic and irrigation water uses;

WHEREAS, the Applicant will need to physically disconnect its existing irrigation system from the City's treated water system in order to establish a new irrigation system ("Applicant's new irrigation system");

WHEREAS, the Applicant and City disagree about whether the City's ordinance 13.04.030 prohibiting disconnection from the City's treated water system controls the outcome of the captioned matter;

WHEREAS, the Applicant and City seek to resolve this dispute short of a hearing before the Idaho Department of Water Resources (IDWR);

WHEREAS, the Applicant agrees it will either supply its irrigation system using a permit granted in the captioned matter OR under the transferred water right 29-14300, and that under no condition will it seek to use both water rights 29-14315 and 29-14300 to supply its irrigation system;

WHEREAS, the Applicant and City agree that the terms of this Stipulation shall apply whether the Applicant receives a permit under the captioned matter or whether the Applicant chooses to operate under the transferred water right 29-14300;

NOW THEREFORE, the Applicant and City (collectively, the "Parties"), hereby stipulate and agree that the City will withdraw its protest in the captioned matter upon the Applicant satisfying the terms of this stipulation.

1. The Applicant agrees it will either use any water right granted by the IDWR in the captioned matter as the exclusive water right to be used for irrigation

purposes at the Place of Use OR that it will use the water right 29-14300, but not both.

2. The Applicant agrees that as of April 9, 2020, neither the Applicant or its agents or assigns will apply for new water right(s) or seek to transfer water right(s) for the subject place of use described in the application for permit number 29-14315.
3. The Applicant agrees that whether it moves forward to irrigate with 29-14315 or 29-14300, it shall physically disconnect from the City water system pursuant to the terms and conditions specified below:
 - a. The Applicant will notify the City of its plans to disconnect from the City water system no later than 48 hours before beginning work;
 - b. The Applicant will allow City personnel to observe the disconnection/inspect the disconnection within five (5) days of the work being performed;
 - c. The Applicant will disconnect the three (3) existing “summer line” meters (those meters that currently supply landscape irrigation water only);
 - d. The service line downstream of each meter shall be physically cut and an air gap established. Blind flanges or other watertight caps shall be installed on the meter side and the irrigation side. The location of these air gaps shall be accessible for examination on an ongoing basis, either located above ground or in an accessible vault; and
 - e. The disconnection from the City water system shall be complete and effectuated in such a manner that no potential cross-connection points between the City water system and the Applicant’s new irrigation system are present.


4. Prior to drilling any well at the Place of Use, the Applicant agrees to:
 - a. Provide a bank letter reflecting the ability to access up to \$100,000 to show financial wherewithal to complete this project;
 - b. Provide stamped and sealed engineering drawings for the well construction, which shall be constructed to public drinking water system standards; and
 - c. Notify the City no less than two business days prior to start of well drilling and provide access for City observation and verification of well construction.
5. Prior to operating any well drilled to pump irrigation water at the Place of Use, the Applicant agrees to provide a site plan map of the property showing:
 - a. Irrigation services (summer line meters) that will be physically disconnected;
 - b. Proposed well and connection to Applicant's new irrigation system;
 - c. Domestic in-house water services and meters to be retained; and
 - d. Location of existing buried irrigation lines within the property.
6. For purposes of operations of any new well drilled to pump irrigation water at the Place of Use, the Applicant agrees it will:
 - a. Comply with all applicable local ordinances and other regulatory statutes and regulations; and
 - b. Abide by formally declared water use restrictions that may be issued by the City of Pocatello or other entities having authority to issue the same.
7. If, at such time in the future, the Applicant wants to reconnect to the City water system for irrigation water, it shall notify the City of its interest in reconnecting and not proceed to reconnect until it has the permission of the City which shall not be unreasonably withheld. Any reconnection will proceed using the same

standards set forth in paragraph 3 of this Stipulation. As part of the standards set forth in paragraph 3, the City re-emphasizes that the Applicant's physical disconnection from the Applicant's well supply will utilize an air gap;

8. To the extent a permit is granted by the IDWR and the terms and conditions of this Stipulation are violated, the Applicant agrees this shall be grounds for curtailment of its water right.
9. This Stipulation shall be an attachment to and substantively considered incorporated into any permit approval the Applicant receives from the IDWR.
10. This Stipulation shall be binding on the Parties and their successors and assigns.
11. Each party shall pay its own costs and attorney fees incurred in this matter.
12. Applicant or protestant City shall file a motion with the Hearing Officer to approve this Stipulation. Upon entry of an order approving the Stipulation, the Stipulation shall be enforceable as an order of the Idaho Department of Water Resources.

Dated this 27th day of August, 2020

344 NORTH 15 LLC

DocuSigned by:

 9AC525206ACB49D
 Kenny Dudunakis
 Authorized Representative

CITY OF POCA TELLO

DocuSigned by:

 2E75987AAD4C4BD...
 Jeffrey L. Mansfield
 Public Works Director/City Engineer

DocuSigned by:

 A9B2CE2AD35B4AD...
 Sarah Klahn
 Attorney for City of Pocatello